IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.26926 of 1999

Dated: 01-05-2007

Between:

1. B. Lakshmaiah, s/o Penchalaiah,
   aged about 26 years,
   r/o Kommuru village,
   Nandalur Mandal,
   Cuddapah District and 28 others.

... Petitioners

and

1. The Government of Andhra Pradesh,
   rep. by its Principal Secretary to Government,
   Revenue (LA) Department,
   Hyderabad and 3 others.

... Respondents

ORDER:

This writ petition is filed seeking a *mandamus* to declare the proceedings dated 11-09-1999 issued by third respondent by which fourth respondent was directed to pass an award in respect of petitioners' house situated at Reach No.2 of Kommuru village, Nandaluru Mandal, Cuddapah District in terms of the award published

in Praja Shakthi Daily Newspaper dated 03-031995, which was lapsed and to ignore the validity of the notification issued in the proceedings of third respondent dated
24-04-1999, as arbitrary and illegal.

2. Facts, in brief, are: Petitioners are the owners of the lands and house property in question and originally a Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') was issued on
03-03-1995 and afterwards no award was passed within a period prescribed under Section 11(A) of the Act and that notification was lapsed. Thereafter, it appears that first respondent issued another Notification under Section 4(1) of the Act on 24-04-1999 and after following the entire procedure as provided under the Act when an award was about to be passed under Section 11(A) of the Act, the Government issued a Memo on 30-03-1999 to the following effect:

> "The Government, after careful examination of the above facts have directed that whenever notifications are issued invoking Section 17 of the Act even after non-passing of the award within the stipulated time under Section 11-A, the land acquisition proceedings will not lapse and award can be passed based on the first notification even after issuance of fresh notification in respect of the same land and such notifications are to be held as non-est in the eye of the law and the first notification issued invoking Section 17(4), alone will be crucial for determination of market value and the provisions of Section 11-A do not apply in cases where advance possession of the land is taken by invoking the provisions of Section 17(4), and the Land Acquisition Officers shall not make undue delay in passing the award as otherwise interest is paid from the date of taking possession of the land which will be an avoidable burden on the Government."

At that juncture, the petitioner approached this Court and filed the present writ petition.

3. The point involved in this writ petition is as to whether petitioners are entitled to payment of compensation from the date of earlier notification issued under Section 4(1) of the Act or from the date of subsequent notification.

4. According to learned counsel for petitioners, there is no dispute with regard to the Memo issued by the Government and if the possession was taken in pursuance of the earlier notification dated 03-03-1995, may be it is true that the landholders are entitled to compensation as per the notification. In the instant case, in pursuance of the notification dated
03-03-1995 no possession was taken and thereafter it got lapsed and even by the date of issuance of fresh notification dated 24-04-1999, respondents did not take the possession of petitioners' land in question and petitioners continued to be in possession.

5. From a perusal of the counter affidavit it is clear that respondents have not taken possession of the lands pursuant to the notification dated 03-03-1995 and it is also not disputed that petitioners are not in possession of the lands in question when the present notification under Section 4(1) of the Act was published on 24-09-1999. Hence, it cannot be said that the said Memo is an application to the case on hand. In fact,
in paragraph 6 of the said Memo it is stated that the earlier notification will come into operation in case where the urgency clause under
Section 17)(4) of the Act was invoked.

6. Hence, this Court has no hesitation to hold that the consequential proceedings issued in D.O.R.O.c2/1500/99, dated 11-09-1999 stating that petitioners are entitled for payment of compensation only in terms of the earlier notification dated 03-03-1995 cannot be said to be correct.

7. Accordingly, the writ petition is allowed and respondents are directed to conduct award enquiry taking the second notification dated 24-09-1999 into consideration and pay compensation accordingly.

No costs.

JUSTICE GOPALAKRISHNA TAMADA

Dt.01-05-2007
GLV